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RUEHBY/AMEMBASSY CANBERRA PRIORITY 2685
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RUEHHE/AMEMBASSY HELSINKI PRIORITY 0307
RUEHMO/AMEMBASSY MOSCOW PRIORITY 2394
RUEHNY/AMEMBASSY OSLO PRIORITY 1197
RUEHUL/AMEMBASSY SEOUL PRIORITY 0094
RUEHSM/AMEMBASSY STOCKHOLM PRIORITY 0663
RUEHFK/AMCONSUL FUKUOKA PRIORITY 8579
RUEHNH/AMCONSUL NAHA PRIORITY 0955
RUEHOK/AMCONSUL OSAKA KOBE PRIORITY 2308
RUEHKSO/AMCONSUL SAPPORO PRIORITY 9164
RUEHGV/USMISSION GENEVA PRIORITY 3357
RUEKJCS/JOINT STAFF WASHINGTON DC PRIORITY
RUEHNO/USMISSION USNATO PRIORITY 1263
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S E C R E T SECTION 01 OF 04 TOKYO 001748

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SUBJECT: OSLO CONVENTION ON CLUSTER MUNITIONS WILL NOT
PREVENT U.S.-JAPAN MILITARY OPERATIONS

REF: SECSTATE 66793

Classified By: Deputy Chief of Mission Joseph Donovan. Reasons 1.4 (b)
and (d).

11. (S) SUMMARY: Japan believes the Oslo Convention on Cluster Munitions (CM) will not interfere with United States Forces in Japan's (USFJ) operations or restrict interoperability with Japan's Self Defense Forces (JSDF), Ministry of Foreign Affairs Deputy Director General Shimbo told the Embassy's Political Minister Counselor and USFJ representatives. Tokyo interprets Article 21 as allowing continued military cooperation and operations involving CM. Examples include transportation of U.S.-owned CM by JSDF or Japanese civilian personnel, increased stockpiling of CM at U.S. military facilities and civilian ports during contingencies. DDG Shimbo warned, however, that if the United Kingdom asks the United States to remove its CM from UK territory there would be tremendous domestic pressure for Japan to do the same. Japan expects to sign the convention in December, barring a positive outcome of the Convention on Certain Conventional Weapons (CCW), which Japan sees as the only way to restrict China's and Russia's CM activities. Legislation implementing the Oslo Convention could be sent to the Diet as early as the next regular session opening in January 2009. In the meantime, the Ministry of Defense and JSDF will consider how to get rid of Japan's CM stockpiles while preventing gaps in defense capabilities. End summary.

Oslo No Affect on U.S.-Japan Operations

12. (S) The Oslo Convention text agreed to at Dublin will not interfere with USFJ's operations or restrict interoperability between U.S. military and Japan Self Defense Forces (JSDF), MOFA Disarmament, Non-proliferation and Science Department Deputy Director-General Masatoshi Shimbo told Embassy Political Minister Counselor and USFJ representatives during a briefing on the May Dublin conference. Japan decided to join the consensus approving the text after much discussion at Dublin on definitions and insertion of language allowing military cooperation and operations with non-State parties. By joining the consensus, Japan is also being consistent with its policy to take seriously the humanitarian concerns caused by CM. DDG Shimbo said Japan will be taking security issues into account as it considers concrete steps toward signing and ratifying the Convention

Article 21 Permits Cooperation

13. (S) DDG Shimbo said the critical part of the Convention is Article 21 paragraph 3, which Japan interprets as enabling the United States and Japan to continue to engage in military cooperation and conduct operations that involve U.S.-owned CM. This includes but is not limited to:

-- Transportation and storage of U.S.-owned CM by Japan Self Defense Forces or Japanese civilian personnel.

-- Movement of additional CM into U.S. military facilities and JSDF bases;

-- Stockpiling and handling of CM at civilian ports during contingencies.

Treaty Text Defined

14. (S) DDG Shimbo explained how Japan is interpreting or otherwise working around language in the convention that could be problematic to U.S. operations in Japan.

-- Article 1 paragraph 1(b) "retain": Although Japan was unable to get the word "retain" removed or changed, the Japanese delegation at the Dublin meeting stated during an intervention that Japan considers "retain" to include ownership and property rights. Therefore, Japanese civilian and Self Defense Forces personnel can transport CM in Japan as long as they do not take legal ownership of the CM. Shimbo noted the intervention had been verbal and was not reflected in any written or official understanding that came out of the Dublin conference. If challenged on this point during Diet deliberations, however, Shimbo said that the Japanese government would most likely reiterate this stance for the record.

-- Article 2 paragraph 8 definition of "transfer": The Government of Japan defines "transfer" to include physical movement into or from Japan and/or the signing over of title to and shifting of control of CM, i.e. "transfer" only occurs when all criteria are met. Hence, the United States can move CM into and out of Japan, and within Japan, as long as Japanese entities or personnel are not taking title to the CM. (Note: MOFA officials said NATO allies, with the possible exception of Norway, are interpreting Article 2 paragraph 8 in the same way. NGOs assert that either/both physical transfer or change in title.)

UK Request to Remove CM

15. (S) DDG Shimbo said he had heard that the United Kingdom may ask the United States to remove CM banned by the Oslo Convention from its territory. If this occurs, there will be tremendous pressure for Japan to follow in the UK's footsteps, DDG Shimbo warned. He asked to be kept apprised

of any developments in U.S.-UK dialogue on the matter.

Steps to Ratification

¶16. (S) Barring an alternative coming out of the Convention on Certain Conventional Weapons (CCW), DDG Shimbo said, Japan will sign the Oslo Convention in December. The government would then draft implementing legislation to be presented along with the Convention to the Diet. The earliest this would occur would be during the next regular session from January to June 2009. DDG Shimbo reiterated that MOFA and MOD are confident that they can defend Article 21 in the Diet, as they will point to official statements and verbal interventions made at the Dublin meeting to show consistency on positions and definitions.

Japan's Cluster Munitions

¶17. (S) MOD Japan-US Defense Cooperation Division Deputy Director Eisuke Tanabe stated that Defense Minister Ishiba's top priority is to avoid a defense capability gap. One option would be to not sign the Oslo Convention or postpone ratification, but this is unlikely given that Chief Cabinet Secretary Machimura has publicly stated Japan will ""take a step forward"" on this issue. The Self Defense Forces are studying how to deal with the anticipated obligation, and the associated costs, to remove CM from the SDF arsenal without creating a capabilities gap.

Capability Gap

¶18. (S) Tanabe said the SDF will seek to fill any gap in U.S.-Japan defense capabilities created by the Oslo Accord and would not look to shift this burden to USFJ. Shimbo said JSDF faced a key question regarding whether to purchase new, non-cluster-type ammunition for the multiple launch rocket system (MLRS). Asked to confirm media reports indicating the Oslo Convention would require the JSDF to eliminate all of their MLRS launchers, Tanabe replied that all options are on the table. Accordingly, the Defense Minister directed MOD to look at all options that would minimize capabilities gaps between U.S. forces and the JSDF. MOD could not provide a recapitalization timeline or schedule.

¶19. (S) USFJ representatives asked Tanabe to consider the affect the reduction in JSDF's capabilities might have on Japan's ability to play a greater role in security affairs worldwide. The U.S. side noted elimination of JSDF MLRS launchers, in conjunction with Tokyo's decision to cancel the AH-1 Apache program, might reduce the Ground Self-Defense Force's ability to engage at long distances, and make interoperability with first-tier militaries more difficult. Such moves also contribute to the capabilities gap between the two forces. Following the meeting, Tanabe observed that MOD would not require a bilateral working group to address future interoperability issues.

Next Step - CCW

¶10. (S) DDG Shimbo said Japan would send a delegation to the July CCW meeting, noting that Prime Minister Fukuda is committed to contributing to the CCW process. Japan recognizes that all of the major CM producers, particularly neighbors China and Russia, are part of the CCW. With Japan's use of CM limited by the Oslo Convention, it is now even more in Japan's interest for there to be stricter controls on CM possession and use in the region. The CCW is the only venue to make this happen, as well as to effectively balance humanitarian concerns and military utility of CM. DDG Shimbo asked if there are any changes in U.S. positions

in the CCW. Embassy Political Minister Counselor drew on points in reftel to express appreciation for Japan's efforts at Dublin to maintain interoperability between our forces. The United States will continue to support and play an active role in negotiations on CM within the CCW framework, PolMinCouns told DDG Shimbo.
SCHIEFFER